

Bruce H. Rabinovitz, Esq. – *Pro Hac Vice*
WILMER CUTLER PICKERING HALE AND DORR LLP
1875 Pennsylvania Avenue, NW
Washington, D.C. 2006
Telephone: (202) 663-6960
Facsimile: (202) 663-6363
E-mail: bruce.rabinovitz@wilmerhale.com

Paul M. Winke, Esq. – *Pro Hac Vice*
WILMER CUTLER PICKERING HALE AND DORR LLP
399 Park Avenue
New York, NY 10022
Telephone: (212) 230-8808
Facsimile: (212) 230-8888
E-mail: paul.winke@wilmerhale.com

Richard G. Grotch, Esq. – SBN 127713
CODDINGTON, HICKS & DANFORTH
A Professional Corporation, Lawyers
555 Twin Dolphin Drive, Suite 300
Redwood City, California 94065-2133
Telephone: (650) 592-5400
Facsimile: (650) 592-5027
E-mail: rgrotch@chdlawyers.com

ATTORNEYS FOR Defendant
UNITED AIR LINES, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NATIONAL FEDERATION OF THE BLIND,
et al.,

Plaintiffs,

vs.

UNITED AIRLINES, INC.,

Defendants.

Case No. C 10-4816 WHA

DEFENDANT'S RESPONSE TO
STATEMENT OF INTEREST BY THE
UNITED STATES

United Air Lines, Inc. ("United") files this short response to the Statement of Interest by
the United States ("Statement") to advise the Court that United agrees with the Statement in all

1 respects: the accessibility of automated ticketing and boarding kiosks at airports is governed by
2 federal law, and Plaintiffs' claims are preempted for three independently sufficient reasons.¹

3 United is aware that the U.S. Department of Transportation ("DOT") is considering a
4 modification of its final rule regarding kiosks. *See* 14 C.F.R. § 382.57. United will of course
5 abide by any validly adopted and applicable federal regulations governing this subject.
6

7 United agrees with the United States that Plaintiffs' claims are field preempted by the Air
8 Carrier Access Act, 49 U.S.C. § 41705 ("ACAA"), because DOT's regulations with respect to
9 the prohibition of disability discrimination generally, and automated kiosks in particular, are "not
10 only pervasive but also encompass Plaintiff's claims in this present case." Statement at 7.

11 United also agrees that Plaintiffs' claims are conflict preempted by the ACAA because the
12 remedy "sought by Plaintiffs would undermine the purpose behind DOT's regulations—the clear
13 and consistent implementation of assistance to blind and other passengers—by forcing the
14 installation of kiosks accessible to the blind in California in a certain way prior to DOT further
15 evaluating the costs and technical feasibility of such a requirement for all kinds of air travelers
16 with disabilities." *Id.* at 10.
17

18 Finally, United agrees with the United States that Plaintiffs' claims are expressly
19 preempted by the Airline Deregulation Act, 49 U.S.C. § 41713, because United's provision of
20 kiosks constitutes a "service," as that term is used in the statute's preemption provision,
21 especially given the Supreme Court's holding "that the 'essential details' of a carrier's
22 transportation system are 'services' for purposes of the Deregulation Act and are therefore
23 protected from state regulation." Statement at 13 (quoting *Rowe v. New Hampshire Motor*
24 *Transport Association*, 552 U.S. 364, 376 (2008)). United also agrees with the United States that
25
26

27 ¹ United notes that the Statement is signed by attorneys representing both the U.S.
28 Department of Transportation and the U.S. Department of Justice.

1 the Ninth Circuit’s “limited definition of ‘services’ is ... on unstable ground in the wake of
 2 *Rowe*.” Statement at 13. But even if that definition of “services” were still valid, United concurs
 3 with the United States that Plaintiffs’ claims are nevertheless preempted, because here, “[u]nlike
 4 the claims in *Charas [v. Trans World Airlines, Inc., 160 F.3d 1259 (9th Cir. 1998)]*, Plaintiffs
 5 effectively seek to require United and other airlines ‘to offer a system of services that the market
 6 does not now provide (and which the carriers would prefer not to offer).’” Statement at 14
 7 (quoting *Rowe*, 552 U.S. at 372).

9 The United States also indicates that the DOT “plans to seek further comment about
 10 kiosks in a forthcoming supplemental notice of proposed rulemaking (SNPRM),” and that the
 11 SNPRM is slated for publication by September 30 of this year. Statement at 5 (quoting
 12 Nondiscrimination on the Basis of Handicap in Air Travel, 73 Fed. Reg. 27614, 27619 (May 13,
 13 2008)). United looks forward to having an opportunity to comment during the rulemaking
 14 process, and will any event ensure that its automated kiosks are in full compliance with any valid
 15 regulations that are issued by the DOT.

17 Dated: April 18, 2011

Respectfully submitted,

18 CODDINGTON, HICKS & DANFORTH

19 /s/ *Richard G. Grotch*

21 By: _____

22 Richard G. Grotch
 23 Attorneys for Defendant
 24 United Air Lines, Inc.